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Foreword

Lindsey R. Hammitt

Michelle L. Hinkl

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FOREWORD

The *Saint Louis University Public Law Review* has consistently provided quality symposia and scholarship covering a broad range of emerging, but targeted topics since its formation in 1981. When presented with the challenge of selecting a theme for Volume 30, Issue 2, the editorial board turned to its mission statement for inspiration. In the first issue, the creators of the *Public Law Review* stated:

Law schools are not paying enough attention to the moral and ethical dilemmas underlying current social issues. If our schools do not debate these issues, where will they be debated? We need to encourage law students to aspire to public service careers, to put their legal talents to work on society's pressing problems of alienation, misallocation of resources, lack of respect for life and for the dignity of the individual.

Accordingly, and for the first time since 1981, the board made the decision to publish a general issue. Instead of narrowing scholarship to fit a proverbial box, a general issue would permit the board to select authors and articles that coherently matched the purpose of the *Public Law Review*—scholarship that made an impression on such broad themes as alienation, misallocation, life, and dignity.

One by one we selected authors and articles to fit our proposed model; what remained was a diverse and varied collaboration of public policy articles that seemingly shared a common thread. But unlike our predecessors, we were left with the task of identifying the common thread at the culmination of article selection. Draft after draft, the theme finally emerged—right.

Right is defined as qualities (as adherence to duty or obedience to lawful authority) that together constitute the ideal of moral propriety or merit moral approval. The word is synonymous with authority, privilege, and liberty. Appropriately, each article can be categorized under some variance of “right”—a word closely linked to the underlying principles of our specialty journal.

Five articles concerning identity and constitutional interference encompass “rights” in the most literal sense. Vincent Samar, Adjunct Professor of Law at the Illinois Institute of Technology, Chicago-Kent College of Law, endorses consideration of substantive due process that is exhibited in the lived experiences of our fellow human beings; namely, those seeking to marry someone of the same sex. After exploring different types of propositional judgments intending to bring forth enough substance to answer the

indeterminacy charge concerning which rights should count as fundamental under substantive due process, Professor Samar analyzes whether same-sex marriage might also be found from our experience of marriage today.

Alexander Maugeri, a law clerk to the Honorable Leslie H. Southwick, U.S. Court of Appeals for the Fifth Circuit, adds to this topical discussion in his article regarding modern conflict of laws principles and their application to same-sex marriage in America. Mr. Maugeri provides a compelling argument that the choice of law disciplines, not constitutional challenges, will dictate what particular benefits, rights, or amalgam of rights associated with a domestic partnership, civil union, or marriage will be granted recognition and legal effect among the fifty states.

Professors Rafael Gely, the Associate Dean for Academic Affairs and James E. Cambell Missouri Professor of Law at the University of Missouri School of Law, and Timothy Chandler, a Professor and the Co-Chair of the Rucks Department of Management at the Louisiana State University Ourso College of Business, address the use of “card checks” as a method of union organizing surrounding the proposed Employee Free Choice Act. Professors Gely and Chandler compare card-check organizing by public sector employees in Illinois and Ohio, before and after Illinois amended its statute to require employers to recognize unions on the basis of card checks, in order to identify the effects of changes in the law and explore the possible implications in other contexts. The comparative analysis provided Professors Gely and Chandler a natural experiment on the effects of public second card-check legislation on organizing activity.

Kami Kruckenberg, a Policy Associate at Poverty and Race Action Council, offers a thorough exploration of the Irish Travellers’ struggle to receive recognition as an ethnic minority group under the law. Delving into the Irish Travellers movement to improve living conditions, fight widespread discrimination, and gain recognition as an ethnic minority group, Ms. Kruckenberg compares the legal status of Irish Travellers under the laws of the Republic of Ireland with their status in the United Kingdom and Northern Ireland, examines the history of Travellers’ legal status in the Republic’s domestic policies, and discusses the challenges faced by Irish Travellers’ in their movement for recognition.

What’s Wrong with the Picture? Reviewing Prison Arts in America, a student comment written by Lindsey Hammitt, offers a thought provoking piece calling for a reconsideration of Son of Sam laws in application of prison art programs. Ms. Hammitt proposes that eliminating the Son of Sam laws will pave the way to publicly accepted prison art programs, encourage the prison art market, and in turn use the proceeds to pay for the void in federal funding and prison implementation.

Articles by Lainie Rutkow and Stephen Teret, Robert Blomquist, and student author, Christopher Lee, appeal to the “authority” notion of “right.”

Each publication considers an agency, branch of government, or treatise's control and responsibility over emerging and debated legal issues. For example, Lainie Rutkow, Assistant Professor and Director for the Center for Law and Public Health at Johns Hopkins University, and Stephen Teret, Professor and Director for the Center for Law and Public Health at Johns Hopkins University, collaborated to identify the potential for state Attorneys General to promote public health. Professors Rutkow and Teret analyze state Attorneys' General current powers, provide a logic model that illustrates how the use of these powers can lead to the protection and promotion of the public's health, examine four case studies to demonstrate how state Attorneys General have used their powers to benefit the public's health, and make recommendations to enhance state Attorneys' General ability to protect the public's health.

Robert Blomquist, Professor of Law at Valparaiso University School of Law, considers executive decision and discretion, as well as judicial review of that decision and discretion, when applied to American national security law. Professor Blomquist suggests that, in resolving problems of American national security law, the Supreme Court should refrain from citing foreign judicial precedent and rely exclusively on American law and precedent, but should be cautiously open to non-precedential learning of transnational ideas regarding national security issues.

A student comment written by Christopher Lee offers a proposal seeking to implement a restorative model statute to the Model Penal Code. Mr. Lee details what restorative justice is, benefits of restorative justice over retributive justice, and the need for a model restorative justice statute; addresses key elements that a restorative justice model statute should contain; and focuses on the practical issues with creating and integrating a restorative justice statute and maintaining a restorative program.

Professor Faith Rivers James, Associate Professor at Elon University of Law, endorses a collegiate model that engages law students in leadership. Drawing a nexus between legal training and leadership, the model seeks to create civic-minded lawyers. This notion accordingly appeals to the "privilege" association of the word, "right." Lawyers and law students are privileged to have the benefit of their education, expertise, and experience to further service-minded efforts to the profession and the public. By incorporating this principle into curricula, law schools will ensure that the principle is advanced and practiced.

On behalf of the *Saint Louis University Public Law Review*, we would like to express our deep appreciation for each author featured in this issue. Their expert knowledge and unique insights have provided excellent subject matter, while their attention to detail and patience with the editorial process make their work really shine. We also are deeply appreciative of the *Public Law Review* editors and staff, who spent countless hours poring over all aspects of this

issue. Professor Matt Bodie, our Faculty advisor, has provided us with valuable input and advice in a variety of situations. We are also deeply grateful to Susie Lee and Will Fruhwirth for their final editing and publication work.

LINDSEY R. HAMMITT
MANAGING EDITOR

MICHELLE L. HINKL
EDITOR-IN-CHIEF